



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable George W. Cox  
State Health Officer  
Austin, Texas

Dear Sir:

Opinion No. 0-2483  
Re: Constitutionality of House  
Bill 225, introduced but  
not enacted at the Regular  
Session of the 46th Legis-  
lature.

This will acknowledge receipt of your letter of June 21, 1940, regarding the constitutionality of House Bill 225, a general food, drugs and cosmetics act introduced but not enacted at the Regular Session of the 46th Legislature.

With unanimity the courts have been very liberal in construing enactments designed to protect the public health under the state police power. Ex parte Vaughan, 93 Crim. Rep. 112, 246 S. W. 373; Cozine vs. State, 87 Crim. Rep. 92, 220 S. W. 102. Delegations of authority to boards of health are seldom held unwarranted. See 12 R. C. L. 1265.

In the field of food and drug legislation, while enactments of the state must not conflict with superior federal legislation, a broad latitude is allowed the state in protecting its citizens from adulterated, impure or misbranded articles in respect to purely intrastate transactions if the enactment does not burden or interfere with interstate commerce. Royal Baking Powder Company vs. Emerson (C.C.A. Ark. 1920) 270 Fed. 429, appeal dismissed (1922), 43 Sup.

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Ct. 166, 260 U.S. 752, 67 L. Ed. 96; McDermott vs. State of Wisconsin (1913) 268 U. S. 155, 33 Sup. Ct. 431, 57 L. Ed. 754, Ann. Cas. 1915a, 39, 47 L.R.A. (N.S.) 984. In the case of H.B. 225 a studious effort seems to have been made to avoid conflict with the Federal Food and Drugs Act, 52 Stat. 1040, 21 U.S.C.A. Secs. 301-392.

Consequently, it is our opinion, and you are respectfully advised that so far as we can ascertain from a careful study of H. B. 225 without having an opportunity to consider its relation to the multitude of diverse fact situations which might arise in its application, the bill does not offend the State or Federal Constitutions insofar as it affects intrastate transactions.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*James D. Smullen*  
James D. Smullen  
Assistant

JDS:ew

*Gertrude Mann*

